The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALAN BERNARD JOHNSTON

Appeal 2006-3274
Application 10/016,110
Technology Center 2100

Decided: February 21, 2007

Before HOWARD B. BLANKENSHIP, MAHSHID D. SAADAT, and ALLEN R. MACDONALD, *Administrative Patent Judges*.

BLANKENSHIP, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal involves claims 1-30, the only claims pending in this application. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 134.

INTRODUCTION

The claims are directed to a data communication system and method for providing content transmission upon placement of a call on hold. The invention utilizes a content server as a source for transmitted content, which may be transmitted over a data network. Claim 1 is illustrative:

1. A data communication system for providing content transmission upon placement of a call on hold, the system comprising:

a server configured to receive a message from a first client indicating the hold condition of the call with a second client; and

another server configured to store the content,

wherein the server is configured to generate a request message, in response to the hold condition, for performing call control on behalf of the first client by transmitting the request message to the other server to instruct the other server to transmit the content to the second client.

The Examiner relies on the following prior art references to show unpatentability:

Hazenfield	US 5,991,374	Nov. 23, 1999
Anjum	US 2001/0028654 A1	Oct. 11, 2001
Kozdon	US 6,456,601 B1	Sep. 24, 2002
Flockhart	US 6,820,260 B1	Nov. 16, 2004

The rejections as presented by the Examiner are as follows:

1. Claims 1, 3, 4, 6, 7, 9, 10, 12, 13, 15, 16, 18, 19, 21, 22, 24, 25, 27, 28, and 30 are rejected under 35 U.S.C. § 103(a) as unpatentable over Kozdon and Flockhart.
2. Claims 2, 8, 14, 20, and 26 are rejected under 35 U.S.C. § 103(a) as unpatentable over Kozdon, Flockhart, and Anjum.

3. Claims 5, 11, 17, 23 and 29 are rejected under 35 U.S.C § 103(a) as unpatentable over Kozdon, Flockhart, and Hazenfield.

OPINION

The Examiner finds that Kozdon describes a server 40 (Fig. 2) configured to receive a message from a first client 24, indicating the hold condition of the call with a second client 34. Another server 10 is configured to store content. The rejection of the independent claims concludes with the statement, attributed to Kozdon, "[w]herein the first server is configured to transmit a request message, in response to the hold condition, for performing call control on behalf of the first client by transmitting the request message to the other server to instruct the other server to transmit the content." (Answer 3-4.) The statement of the rejection does not say where Kozdon describes the contents of the "wherein" clause.

The rejection continues, however, that Kozdon does not "expressly" disclose that the first server generates a request message or simply forwards a request message from another unit or that the second server transmits the content directly to the second client. The rejection turns to teachings in Flockhart, concluding that it would have been obvious to "have added Flockhart's server separation method to Kozdon in order to ensure that the on-hold server's resources are not tied up. . . ." (Answer 4.)

In response to Appellant's arguments, the Examiner contends that the claims do no expressly state a physical separation between the first and second servers, do not expressly state a direct transmission between the second server and second client, nor preclude the transmission from

traveling through the first server. (Answer 6.) Flockhart is deemed to teach sending something (presumably, an applet) through a first server. (*See id.*)

Kozdon depicts in Figure 1 a multicast server 10 that contains, *inter alia*, music-on-hold audio files for delivery within a packet-based network environment. A first router 12 transmits call progress tones or pre-programmed audio deliveries within the network. Kozdon col. 3, l. 61 - col. 4, l. 11. The call progress tones and pre-programmed audio deliveries from the multicast server 10 are transmitted to all the telephony-enabled services that register to receive the signals. Audio content may be delivered by multiple multicast streams, or, alternatively, multiplexed into a single data stream that can be broadcast to all the registered devices. The multicast call progress tones and audio deliveries may be directed by a called telephone. For example, called telephone 24 may place remote telephone 34 on hold and may direct music-on-hold from the multicast packets in which the music is embedded. The music-on-hold is redirected to the remote telephone 34 (via router 30 and remote network 32). Col. 4, ll. 30-65.

In the embodiment referenced by the rejection (Fig. 2), proxies 40, 42 receive and process the multicast signals from server 10 and router 12. In the case that, for example, the caller at telephone 24 wishes to place the caller at remote telephone 34 on hold, the call is transferred to proxy 40. Proxy 40 uses the same system-wide, multicast announcement service from server 10 as the first (Fig. 1) embodiment. Kozdon col. 5, ll. 28-53.

Kozdon thus does not describe a first server (40) configured to transmit a request message, in response to the hold condition, for performing call control on behalf of the first client (24) by transmitting the request message to the other (content) server (10) to instruct the other server to

transmit the content. Proxy server 40 in Kozdon receives multicast content from server 10, and redirects that content as needed. Proxy server 40 does not send any message to multicast server 10 for the server 10 to transmit its content to the second client (34).

Flockhart teaches sending audio content, in the form of applets, from a call center 106 (Fig. 1) to a client 100 when on hold. Flockhart col. 3, l. 6 - col. 5, l. 22. Client 100 does not, as the rejection (Answer 4) seems to suggest, direct a call to agent 109. Rather, the call center provides the audio content until a next agent is available or when a call with the agent is disconnected for a period of time (col. 4, l. 66 - col. 5, l. 22; Fig. 2). Flockhart does teach that the functions represented by blocks 96 through 98 and 103, which are functionally part of call center 106, may be implemented by a processor that is separate from ACD (automatic call distributor) 107 (col. 3, ll. 48-61). In any event, whatever "server separation method" that the rejection deems Flockhart to teach does not remedy the basic deficiency in Kozdon.

We thus agree with Appellant that the rejection fails to show disclosure or suggestion in the prior art of all the limitations of any one of the independent claims. Because Anjum and Hazenfield as applied in further combination against the dependent claims fail to contribute to a showing of prima facie obviousness of the independent claims, we do not sustain any of the § 103(a) rejections on appeal.

CONCLUSION

In summary, we reverse the rejections of claims 1-30 under § 103(a) over the applied prior art.

REVERSED

PGC

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